UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/C.12/1997/4
20 May 1997

Original: ENGLISH

COMMITTEE ON ECONOMIC, SOCIAL
AND CULTURAL RIGHTS
Sixteenth session
28 April-16 May 1997

IMPLEMENTATION OF THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

General Comment No. 7 (1997)

The right to adequate housing (art. 11.1 of the Covenant): forced evictions

1. In its General Comment No. 4 (1991), the Committee observed that all persons should possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats. It concluded that forced evictions are prima facie incompatible with the requirements of the Covenant. Having considered a significant number of reports of forced evictions in recent years, including instances in which it has determined that the obligations of States Parties were being violated, the Committee is now in a position to seek to provide further clarification as to the implications of such practices in terms of the obligations contained in the Covenant.

2. The international community has long recognized that the issue of forced evictions is a serious one. In 1976, the United Nations Conference on Human Settlements noted that special attention should be paid to "undertaking major clearance operations should take place only when conservation and rehabilitation are not feasible and relocation measures are made". 1/ In 1988, in the Global Strategy for Shelter to the Year 2000, adopted by the General Assembly in its resolution 43/181, the "fundamental obligation [of Governments] to protect and improve houses and neighbourhoods, rather than

damage or destroy them" was recognized. 2/ Agenda 21 stated that "people should be protected by law against unfair eviction from their homes or land". 3/ In the Habitat Agenda Governments committed themselves to "protecting all people from, and providing legal protection and redress for, forced evictions that are contrary to the law, taking human rights into consideration; [and] when evictions are unavoidable, ensuring, as appropriate, that alternative suitable solutions are provided". 4/ The Commission on Human Rights has also indicated that "forced evictions are a gross violation of human rights". 5/ However, although these statements are important, they leave open one of the most critical issues, namely that of determining the circumstances under which forced evictions are permissible and of spelling out the types of protection required to ensure respect for the relevant provisions of the Covenant.

3. The use of the term "forced evictions" is, in some respects, problematic. This expression seeks to convey a sense of arbitrariness and of illegality. To many observers, however, the reference to "forced evictions" is a tautology, while others have criticized the expression "illegal evictions" on the ground that it assumes that the relevant law provides adequate protection of the right to housing and conforms with the Covenant, which is by no means always the case. Similarly, it has been suggested that the term "unfair evictions" is even more subjective by virtue of its failure to refer to any legal framework at all. The international community, especially in the context of the Commission on Human Rights, has opted to refer to "forced evictions", primarily since all suggested alternatives also suffer from many such defects.

4. The term "forced evictions" as used throughout this General Comment is defined as the permanent or temporary removal against their will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection. The prohibition on forced evictions does not, however, apply to evictions carried out by force in accordance with the law and in conformity with the provisions of the International Covenants on Human Rights.

5. The practice of forced evictions is widespread and affects persons in both developed and developing countries. Owing to the interrelationship and interdependency which exist among all human rights, forced evictions frequently violate other human rights. Thus, while manifestly breaching the rights enshrined in the Covenant, the practice of forced evictions may also result in violations of civil and political rights, such as the right to life, the right to security of the person, the right to non-interference with privacy, family and home and the right to the peaceful enjoyment of possessions.

6. Although the practice of forced evictions might appear to occur primarily in heavily populated urban areas, it also takes place in connection with forced population transfers, internal displacement, forced relocations in the context of armed conflict, mass exoduses and refugee movements. In all of these contexts, the right to adequate housing and not to be subjected to forced eviction may be violated through a wide range of acts or omissions attributable to States Parties. Even in situations where it may be necessary to impose limitations on such a right, full compliance with article 4 of the

Covenant is required so that any limitations imposed must be "determined by law only insofar as this may be compatible with the nature of these [i.e. economic, social and cultural] rights and solely for the purpose of promoting the general welfare in a democratic society".

7. Many instances of forced eviction are associated with violence, such as evictions resulting from international armed conflicts, internal strife and communal or ethnic violence.

8. Other instances of forced eviction occur in the name of development. Evictions may be carried out in connection with conflict over land rights, development and infrastructure projects, such as the construction of dams or other large-scale energy projects, with land acquisition measures associated with urban renewal, housing renovation, city beautification programmes, the clearing of land for agricultural purposes, unbridled speculation in land, or the holding of major sporting events like the Olympic Games.

9. In essence, the obligations of States Parties to the Covenant in relation to forced evictions are based on article 11.1, read in conjunction with other relevant provisions. In particular, article 2.1 obliges States to use "all appropriate means" to promote the right to adequate housing. However, in view of the nature of the practice of forced evictions, the reference in article 2.1 to progressive achievement based on the availability of resources will rarely be relevant. The State itself must refrain from forced evictions and ensure that the law is enforced against its agents or third parties who carry out forced evictions (as defined in para. 3 above). Moreover, this approach is reinforced by article 17.1 of the International Covenant on Civil and Political Rights which complements the right not to be forcefully evicted without adequate protection. That provision recognizes, inter alia, the right to be protected against "arbitrary or unlawful interference" with one's home. It is to be noted that the State's obligation to ensure respect for that right is not qualified by considerations relating to its available resources.

10. Article 2.1 of the Covenant requires States Parties to use "all appropriate means", including the adoption of legislative measures, to promote all the rights protected under the Covenant. Although the Committee has indicated in its General Comment No. 3 (1990) that such measures may not be indispensable in relation to all rights, it is clear that legislation against forced evictions is an essential basis upon which to build a system of effective protection. Such legislation should include measures which (a) provide the greatest possible security of tenure to occupiers of houses and land, (b) conform to the Covenant and (c) are designed to control strictly the circumstances under which evictions may be carried out. The legislation must also apply to all agents acting under the authority of the State or who are accountable to it. Moreover, in view of the increasing trend in some States towards the Government greatly reducing its responsibilities in the housing sector, States Parties must ensure that legislative and other measures are adequate to prevent and, if appropriate, punish forced evictions carried out, without appropriate safeguards, by private persons or bodies. States Parties should therefore review relevant legislation and policies to ensure that they

are compatible with the obligations arising from the right to adequate housing and repeal or amend any legislation or policies that are inconsistent with the requirements of the Covenant.

11. Women, children, youth, older persons, indigenous people, ethnic and other minorities, and other vulnerable individuals and groups all suffer disproportionately from the practice of forced eviction. Women in all groups are especially vulnerable given the extent of statutory and other forms of discrimination which often apply in relation to property rights (including home ownership) or rights of access to property or accommodation, and their particular vulnerability to acts of violence and sexual abuse when they are rendered homeless. The non-discrimination provisions of articles 2.2 and 3 of the Covenant impose an additional obligation upon Governments to ensure that, where evictions do occur, appropriate measures are taken to ensure that no form of discrimination is involved.

12. Whereas some evictions may be justifiable, such as in the case of persistent non-payment of rent or of damage to rented property without any reasonable cause, it is incumbent upon the relevant authorities to ensure that they are carried out in a manner warranted by a law which is compatible with the Covenant and that all the legal recourses and remedies are available to those affected.

13. Forced eviction and house demolition as a punitive measure are also inconsistent with the norms of the Covenant. Likewise, the Committee takes note of the obligations enshrined in the Geneva Conventions of 1949 and Protocols thereto of 1977 concerning prohibitions on the displacement of the civilian population and the destruction of private property as these relate to the practice of forced eviction.

14. States Parties shall ensure, prior to carrying out any evictions, and particularly those involving large groups, that all feasible alternatives are explored in consultation with the affected persons, with a view to avoiding, or at least minimizing, the need to use force. Legal remedies or procedures should be provided to those who are affected by eviction orders. States Parties shall also see to it that all the individuals concerned have a right to adequate compensation for any property, both personal and real, which is affected. In this respect, it is pertinent to recall article 2.3 of the International Covenant on Civil and Political Rights, which requires States Parties to ensure "an effective remedy" for persons whose rights have been violated and the obligation upon the "competent authorities (to) enforce such remedies when granted".

15. In cases where eviction is considered to be justified, it should be carried out in strict compliance with the relevant provisions of international human rights law and in accordance with general principles of reasonableness and proportionality. In this regard it is especially pertinent to recall General Comment 16 of the Human Rights Committee, relating to article 17 of the International Covenant on Civil and Political Rights, which states that interference with a person's home can only take place "in cases envisaged by the law". The Committee observed that the law "should be in accordance with

the provisions, aims and objectives of the Covenant and should be, in any event, reasonable in the particular circumstances". The Committee also indicated that "relevant legislation must specify in detail the precise circumstances in which such interferences may be permitted".

16. Appropriate procedural protection and due process are essential aspects of all human rights but are especially pertinent in relation to a matter such as forced evictions which directly invokes a large number of the rights recognized in both the International Covenants on Human Rights. The Committee considers that the procedural protections which should be applied in relation to forced evictions include: (a) an opportunity for genuine consultation with those affected; (b) adequate and reasonable notice for all affected persons prior to the scheduled date of eviction; (c) information on the proposed evictions, and, where applicable, on the alternative purpose for which the land or housing is to be used, to be made available in reasonable time to all those affected; (d) especially where groups of people are involved, government officials or their representatives to be present during an eviction; (e) all persons carrying out the eviction to be properly identified; (f) evictions not to take place in particularly bad weather or at night unless the affected persons consent otherwise; (g) provision of legal remedies; and (h) provision, where possible, of legal aid to persons who are in need of it to seek redress from the courts.

17. Evictions should not result in individuals being rendered homeless or vulnerable to the violation of other human rights. Where those affected are unable to provide for themselves, the State Party must take all appropriate measures, to the maximum of its available resources, to ensure that adequate alternative housing, resettlement or access to productive land, as the case may be, is available.

18. The Committee is aware that various development projects financed by international agencies within the territories of State Parties have resulted in forced evictions. In this regard, the Committee recalls its General Comment No. 2 (1990) which states, inter alia, that "international agencies should scrupulously avoid involvement in projects which, for example ... promote or reinforce discrimination against individuals or groups contrary to the provisions of the Covenant, or involve large-scale evictions or displacement of persons without the provision of all appropriate protection and compensation. Every effort should be made, at each phase of a development project, to ensure that the rights contained in the Covenant are duly taken into account". 6/

19. Some institutions, such as the World Bank and the Organization for Economic Cooperation and Development (OECD) have adopted guidelines on relocation and/or resettlement with a view to limiting the scale of and human suffering associated wich forced evictions. Such practices often accompany large-scale development projects, such as dam-building and other major energy projects. Full respect for such guidelines, insofar as they reflect the obligations contained in the Covenant, is essential on the part of both the agencies themselves and States Parties to the Covenant. The Committee recalls in this respect the statement in the Vienna Declaration and Programme of Action to the effect that "while development facilitates the enjoyment of all

human rights, the lack of development may not be invoked to justify the abridgement of internationally recognized human rights" (Part I, para. 10).

20. In accordance with the guidelines for reporting adopted by the Committee, State Parties are requested to provide various types of information pertaining directly to the practice of forced evictions. This includes information relating to (a) the "number of persons evicted within the last five years and the number of persons currently lacking legal protection against arbitrary eviction or any other kind of eviction", (b) "legislation concerning the rights of tenants to security of tenure, to protection from eviction" and (c) "legislation prohibiting any form of eviction". 7/

21. Information is also sought as to "measures taken during, inter alia, urban renewal programmes, redevelopment projects, site upgrading, preparation for international events (Olympics and other sporting competitions, exhibitions, conferences, etc.) 'beautiful city' campaigns, etc. which guarantee protection from eviction or guarantee rehousing based on mutual consent, by any persons living on or near to affected sites". 8/ However, few States Parties have included the requisite information in their reports to the Committee. The Committee therefore wishes to emphasize the importance it attaches to the receipt of such information.

22. Some States Parties have indicated that information of this nature is not available. The Committee recalls that effective monitoring of the right to adequate housing, either by the Government concerned or by the Committee, is not possible in the absence of the collection of appropriate data and would request all States Parties to ensure that the necessary data is collected and is reflected in the reports submitted by them under the Covenant.

Notes

1/ Report of Habitat: United Nations Conference on Human Settlements, Vancouver, 31 May-11 June 1976 (A/CONF.70/15), chap. II, recommendation B.8, para. C (ii).

2/ Report of the Commission on Human Settlements on the work of its eleventh session, Addendum (A/43/8/Add.1), para. 13.

3/ Report of the United Nations Conference on Environment and Development, Rio de Janeiro, 3-14 June 1992, Volume I (A/CONF.151/26/Rev.1(vol.I), annex II, Agenda 21, chap. 7.9 (b).

4/ Report of the United Nations Conference on Settlements (Habitat II) (A/CONF.165/14), annex II, The Habitat Agenda, para. 40 (n).

5/ Commission on Human Rights resolution 1993/77, para. 1.

6/ E/1990/23, annex III, paras. 6 and 8 (d).

7/ E/C.12/1990/8, annex IV.

8/ Ibid.

UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/C.12/1997/5
15 August 1997

Original: ENGLISH

COMMITTEE ON ECONOMIC, SOCIAL
AND CULTURAL RIGHTS
Seventeenth session
Geneva, 17 November- 5 December 1997

PROVISIONAL AGENDA AND ANNOTATIONS

Note by the Secretary-General

1. The seventeenth session of the Committee on Economic, Social and Cultural Rights, established in accordance with Economic and Social Council resolution 1985/17, will be held at the United Nations Office in Geneva from 17 November to 5 December 1997. The first meeting will be convened on Monday, 17 November 1997 at 10.30 a.m.

2. The attached provisional agenda and annotations for the seventeenth session of the Committee have been prepared by the Secretary-General in accordance with rule 4 of the rules of procedure of the Committee.

3. The attention of the States parties is drawn, in particular, to the annotations to item 6 containing the list of reports that will be before the Committee at its seventeenth session.

PROVISIONAL AGENDA

1. Adoption of the agenda.

2. Organization of work.

3. Substantive issues arising in the implementation of the International Covenant on Economic, Social and Cultural Rights.

4. Follow-up to the consideration of reports under articles 16 and 17 of the Covenant.

5. Relations with United Nations organs and other treaty bodies.

6. Consideration of reports:

   (a) Reports submitted by States parties in accordance with articles 16 and 17 of the Covenant.

   (b) Reports submitted by specialized agencies in accordance with article 18 of the Covenant.

7. General discussion: "Normative content of the right to food" (Article 11 of the International Covenant on Economic, Social and Cultural Rights).

8. Submission of reports by States parties in accordance with articles 16 and 17 of the Covenant.

9. Formulation of suggestions and recommendations of a general nature based on the consideration of reports submitted by States parties to the Covenant and by the specialized agencies.

10. Adoption of the report.

ANNOTATIONS

1. Adoption of the agenda

Under rule 5 of the rules of procedure, the first item on the provisional agenda of any session shall be the adoption of the agenda, except for the election of its officers when required under rule 14. In accordance with rule 6 the Committee, during a session, may revise the agenda and may, as appropriate, add, delete or defer items.

2. Organization of work

In accordance with rule 8 of its rules of procedure, at the beginning of each session, the Committee shall consider appropriate organizational matters, including the schedule of its meetings. In this connection, the attention of the members of the Committee is drawn to the draft programme of work for the session, prepared by the Secretary-General in consultation with the Chairperson of the Committee and in accordance with established practice (E/C.12/1997/L.2).

3. Substantive issues arising in the implementation of the International Covenant on Economic, Social and Cultural Rights

The Committee decided at its fourteenth session (28 April-17 May 1996) that as from its fifteenth session its discussions relating to the implementation of the Covenant (NGO hearings, methods of work, etc.) would be conducted under this agenda item.

4. Follow-up to the consideration of reports under articles 16 and 17 of the Covenant

At its fourteenth session, the Committee on Economic, Social and Cultural Rights, recognizing the importance of periodically reviewing the implementation by States parties of its suggestions and recommendations, requested the Secretariat to submit to it, as from the fifteenth session, a document indicating all cases where a follow-up had been suggested by the Committee. In this connection, the attention of the members of the Committee is drawn to document E/C.12/1997/7 which contains the requested information.

5. Relations with United Nations organs and other treaty bodies

The Committee decided at its sixth session to nominate individual members to follow the work of each of the other treaty bodies. Such members are to follow as closely as possible the work of the relevant committees, to liaise where possible with members of these committees and to present an oral report on developments of both a procedural and substantive nature in their work which appeared to be of specific relevance to the work of the Committee (E/1992/23, paras. 371-373).

6. Consideration of reports

(a) Reports submitted by States parties in accordance with articles 16 and 17 of the Covenant

In accordance with rule 61, paragraph 2, of its rules of procedure, the Committee shall normally consider the reports submitted by States parties under article 16 of the Covenant in the order in which they have been received by the Secretary-General. Representatives of the reporting States are entitled to be present at the meetings of the Committee when their reports are examined; such representatives should be able to make statements on the reports submitted by their Governments and reply to questions which may be put to them by the members of the Committee.

At its sixteenth session, the Committee requested the Secretary-General to schedule six reports from six States parties for consideration at its seventeenth session. The Committee also decided to conduct at its seventeenth session a review of the implementation of the provisions of the Covenant in Saint Vincent and the Grenadines, which has not submitted any report since ratifying the Covenant in 1982, on the basis of any information that may be available to it.

In accordance with rule 62, paragraph 2, of the Committee's rules of procedures, the Secretary-General has informed the States parties concerned of the opening date and duration of the seventeenth session of the Committee as well as of the dates at which their respective reports will be examined and has invited them to send representatives to attend the meetings of the Committee.

As at 15 August 1997, the reports listed below had been received by the Secretary-General. The reports of the States parties which are scheduled for consideration by the Committee at its seventeenth session are identified by an asterisk. The tentative timetable for consideration of those reports, prepared by the Secretary-General in consultation with the Chairperson of the Committee, is contained in document E/C.12/1997/L.2.

Initial reports concerning articles 1 to 15 of the Covenant

Azerbaijan*	E/1990/5/Add.30
Nigeria	E/1990/5/Add.31
Sri Lanka	E/1990/5/Add.32
Switzerland	E/1990/5/Add.33
Ireland	E/1990/5/Add.34
Cameroon	E/1990/5/Add.35
Armenia	E/1990/5/Add.36

Second periodic reports concerning articles 1 to 15 of the Covenant

Dominican Republic*	E/1990/6/Add.7
Luxembourg*	E/1990/6/Add.9
Uruguay*	E/1990/6/Add.10
Netherlands	E/1990/6/Add.11, 12, 13
Tunisia	E/1990/6/Add.14
Iceland	E/1990/6/Add.15
Argentina	E/1990/6/Add.16

Third periodic reports concerning articles 1 to 15 of the Covenant

Iraq*	E/1994/104/Add.9
United Kingdom of Great Britain and Northern Ireland*	E/1994/104/Add.11
Cyprus	E/1994/104/Add.12
Poland	E/1994/104/Add.13
Germany	E/1994/104/Add.14
Denmark	E/1994/104/Add.15
Bulgaria	E/1994/104/Add.16
Mexico	E/1994/104/Add.17

(b) Reports submitted by specialized agencies in accordance with article 18 of the Covenant

In accordance with rule 67 of its rules of procedure, the Committee is entrusted with the task of considering the reports submitted by specialized agencies pursuant to article 18 of the Covenant.

In accordance with rule 68 of the rules of procedure, the representatives of the specialized agencies concerned may make statements on matters falling within the scope of the activities of their respective organization in the course of the discussion by the Committee of the report of each State party to the Covenant. The representatives of the States parties presenting reports to the Committee shall be free to respond to, or take into account, the statements made by the specialized agencies. The Secretary-General has invited the following specialized agencies, United Nations organs and financial institutions to send representatives to attend the meetings of the Committee: International Labour Organization (ILO), Food and Agriculture Organization of the United Nations (FAO), United Nations Educational, Scientific and Cultural Organization (UNESCO), World Health Organization (WHO), Office of the United Nations High Commissioner for Refugees (UNHCR), United Nations Development Programme

(UNDP), Joint United Nations Programme on HIV/Aids (UNAIDS), International Monetary Fund (IMF) and the World Bank.

Any report which may be received from the specialized agencies under article 18 of the Covenant will be made available to the Committee in due course.

7. General discussion: "Normative content of the right to food (article 11 of the International Covenant on Economic, Social and Cultural Rights"

At its sixteenth session, the Committee decided that Monday, 1 December 1997 would be a day of general discussion devoted to the normative content of the right to food. The Committee also decided that this day of general discussion will be held in cooperation with the Food and Agriculture Organization of the United Nations.

8. Submission of reports by States parties in accordance with articles 16 and 17 of the Covenant

In accordance with rule 59, paragraph 1, of its rules of procedure, the Committee shall at each session consider the status of submission of reports under article 16 of the Covenant and may make appropriate recommendations to the Council, including recommendations to the effect that the Secretary-General should send reminders to States parties from which reports have not been received.

The Committee will have before it under this item the following document:

A note by the Secretary-General on the States parties to the Covenant and the status of submission of reports (E/C.12/1997/6).

9. Formulation of suggestions and recommendations of a general nature based on the consideration of reports submitted by States parties to the Covenant and by the specialized agencies

Pursuant to rule 64 of its rules of procedure, the Committee may wish to make suggestions and recommendations of a general nature on the basis of its consideration of reports submitted by States parties and the reports submitted by specialized agencies, in order to assist the Council to fulfil, in particular, its responsibilities under articles 21 and 22 of the Covenant. The Committee may also wish to make suggestions for consideration by the Council with reference to articles 19, 22 and 23 of the Covenant.

10. Report of the Committee on Economic, Social and Cultural Rights

In accordance with rule 57 of its rules of procedure, the Committee shall submit to the Council an annual report on its activities, which shall contain, inter alia, the concluding observations of the Committee relating to each State party's report.

The Committee shall also include in its report suggestions and recommendations of a general nature referred to under rule 64 of the rules of procedure of the Committee.